

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850

(240) 777-6600

**Case No. S-1553**

**PETITION OF MOBIL OIL CORPORATION**

Resolution to Re-affirm and Modify Special Exception  
(Hearing Date: December 12, 2001)  
(Effective Date of Resolution: February 1, 2002)

**BACKGROUND**

This hearing is a continuation of a show cause hearing originally convened on April 17, 2001, and continued to October 10, 2001 and November 14, 2001. The show cause hearings were based on Notices of Violation issued by the Department of Permitting Services to the special exception holder on May 13, 1999 and December 28, 2000. At the conclusion of the November 14, 2001 proceedings the Board voted to issue a Resolution (dated December 4, 2001) requiring compliance with five conditions contained therein and continued the hearing to December 12, 2001.

At the hearing held December 12, 2001, Mr. Barr appeared representing Mobil Oil Corporation. Tony Haddad, the station operator also appeared, representing himself.

**EVIDENCE PRESENTED**

Mr. Haddad testified that an engineering certification had been obtained for the shed housing the electrical panel for the carwash. He provided a copy of that certification which is in the Board's file as Exhibit 82. Mr. Haddad further testified that he had hired a landscaper to install the landscaping as specified on the originally approved landscape plan to the extent specified plant materials were available, and that the landscaping is now substantially in compliance with the approved landscape. Mr. Haddad provided pictures of the landscaping to the Board [Exhibit 81]. Mr. Haddad also testified that the lighting installed in violation of the approved lighting plan had been removed. Finally, Mr. Haddad stated that the sign frame in need of repair had been fixed.

## FINDINGS OF THE BOARD

Based on the evidence presented above, the Board finds that Mr. Haddad is now substantially in compliance with the requirements of the Board's Special Exception opinion. The Board requires the following additional action be taken by the petitioners:

1. Submit to the Maryland-National Capital Park and Planning Commission a revised landscape and lighting plan showing the landscaping which has been actually installed and the lighting as it currently exists. This plan is to be submitted within thirty (30) days of December 12, 2001. The Board further requires that the landscape and lighting plan must receive approval by the staff of Maryland-National Capital Park and Planning Commission within ninety (90) days of December 12, 2001. Should approval not be obtained for the plan, the petitioner must notify the Board, outline the steps taken, and the reasons for the delay in approval, and request an administrative modification for an extension of time for obtaining the required approval.
2. The Board further reopens the record to accept the engineering certification for the shed as submitted by Mr. Haddad.
3. The Board revokes its action, contained in the Board's Resolution dated December 4, 2001, suspending the operation of the carwash.
4. The applicant will continue to be bound by all prior terms and conditions of the special exception. Therefore,

On a motion by Donna L. Barron, seconded by Louise L. Mayer, with Angelo M. Caputo, Allison I. Fultz and Donald H. Spence, Jr., Chairman in agreement,

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 1<sup>st</sup> day of February, 2002.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Bard's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

**CORRECTED RESOLUTION:**                      **BOARD OF APPEALS**  
**DATE ENTERED INTO**                                      **for**  
**OPINION BOOK**                                      **MONTGOMERY COUNTY**

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland Avenue  
(240) 777-6600  
Hours of Operation: 8:30 a.m. – 4:00 p.m.

**CASE No. S-1553**

**PETITION OF MOBIL OIL CORPORATION**

RESOLUTION TO REQUIRE COMPLIANCE  
(Resolution Adopted November 14, 2001)  
(Effective Date of Resolution: December 4, 2001)

Case No. S-1553 is a special exception granted October 21, 1988 to Mobil Oil Corporation, pursuant to Section 59-G-2.29 of the Montgomery County Zoning Ordinance, to permit reconstruction and operation of an automobile filling station.

The subject property is a 1.0830 acre portion of parcel 307, located at the southeast quadrant of the intersection of Plummer Drive and Frederick Road, located at 19235 Frederick Road, Germantown, Maryland, in the C-1 Zone.

**EVIDENCE BEFORE THE BOARD**

1. The Board of Appeals received a memorandum, dated June 26, 2000, from Stanley N. Garber, Zoning Investigator, Department of Permitting Services. Mr. Garber's memorandum of June 26, 2000 states, in part:

"On May 25, 1999, Acting Executive Secretary Katherine Freeman requested the Department conduct an inspection of the special exception and provide the Board with a report. On May 13, 1999, Zoning Investigator Susan Scala-Demby issued Mobil Oil Corporation, a Notice of Violation to remove the security lights or modify the special exception. On June 1, 1999, Mobil Oil Corporation's attorney John R. Barr responded to Ms. Scala-Demby's Notice in writing, that he will "request Mobil to obtain from the manufacturer of the new security lights, the necessary technical information for determining the halo to be cast by these lights, as well as what devices are available to focus or shade them". On July 7, 1999, Mr. Barr sent another letter to Ms. Scala-Demby that he would advise his client to file for a new lighting plan at MNCPPC. He further states, "Either Mobil will file such a request or they will appeal the Notice of Violation to the Board. On November 30, 1999, Mr. Bar sent Wayne Knoll, Development Review Section with MNCPPC, a letter requesting staff approval for the change of the approved lighting plan. On February 1, 2000, Mr. Knoll responded to Mr.

Barr's letter requesting that several changes be made to reduce the amount of light leaving the site.

. . . I met with Mr. Barr and his client at the Mobile Station on May 12, 2000 and required that the new lighting be disconnected until the matter is resolved.

. . . Therefore, I request that the Board petition a Show Cause Hearing to determine a resolution to this active violation."

2. By Resolution dated October 12, 2000, the Board of Appeals denied a request from Tony Haddad, the station operator, to administratively modify the special exception to expand the carwash and replace the equipment for it. In addition, by the same Resolution, pursuant to Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance, and based upon Mr. Garber's June 26, 2000 memorandum, the Board of Appeals convened a hearing on November 29, 2000, for the special exception holder to appear and show cause why the special exception should not be revoked. Mr. Garber testified about his inspection of the subject property. Neither the special exception holder nor the property owner attended the hearing. At the conclusion of the proceedings, the Board voted unanimously to revoke the special exception. The Board was later notified that neither the station operator nor Mobil received notice of the Show Cause Hearing. At the Board's worksession held on January 9, 2001, the Board rescinded its revocation of the special exception, and voted to reschedule the Show Cause Hearing.

3. The Board also received a memorandum from Mr. Garber, dated, January 23, 2001 which states, in part:

"On December 28, 2000, I issued a Notice of Violation to Middlebrook Incorporation c/o Tosco Marketing to obtain a building permit for a storage shed located behind the car wash and to remove all signs on the property that are without issued permits or, the Board's approval. Copies of the Notice were sent to the property owner and the Mobil Station located in Germantown.

On January 5, 2001, I met with the manager of Mobil Oil who requested that I allow the signs to remain on the property. I indicated to him that the signs are not only without permits but are also located in the County R-O-W and my direction to remove the signs within 15 days would still be enforced. As of this date, the signs still remain on the property without issued permits and we have not received an application for the storage shed. The owner indicated to me that the shed couldn't be removed as directed in my Notice, since the electrical panel boxes located in the shed feed power to operate the car wash.

Therefore, I request that the Board petition a Show Cause Hearing to determine a resolution to this active violation per Section 59-G-1.3(a)(4) of the Montgomery County Zoning Ordinance."

2. On April 17, 2001, pursuant to Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance, and based upon the violations noted in Mr. Garber's memoranda of June 26, 2000 and January 23, 2001, the Board of Appeals convened a hearing for the special exception holder to appear and show cause why the special exception should not be revoked. John R. Barr, Esquire appeared on behalf of Tosco, Marketing, Inc., the owner of the property. Stanley N. Garber, Zoning Investigator, Department of Permitting Services, testified about his inspections of the property. Mr. Thompson, a representative of Tosco Marketing, also appeared.

3. At the April 17, 2001 hearing, Mr. Barr, on behalf of Tosco, requested that the Board accept the proposed lighting plan, which had been approved by technical staff of the Maryland National Capital Park and Planning Commission. Tosco further proposed to amend the special exception site plan to reflect the presence of a shed which encloses the electrical panels for the carwash, and to obtain all necessary permits pertaining to that shed. Mr. Barr stated that he would advise Tosco that all signs on the property which did not have required permits should be removed. At the conclusion of the April 17, 2001 proceeding, the Board decided to schedule another hearing date for the continuation of the Show Cause Hearing.

4. The Board reconvened the Show Cause Hearing on October 10, 2001. At that hearing, Mr. Barr submitted a report from L&C Electric Company, [Exhibit No. 66] that the site lighting fully complied with the approved lighting plan.

5. At the conclusion of the October 10, 2001 proceeding the following issues remained outstanding:

- The amended site landscaping plan had not been approved by technical staff at MNCPPC.
- There were some lights located inside the carwash building, not reflected in the exhibits for the special exception. Mr. Barr proposed to advise Tosco to remove those lights [Transcript, October 10, 2001, p. 6].
- Sign E-2, [Exhibit No. 64(b)] did not comply with the Montgomery County Sign Ordinance.
- Electrical permits or certification was required for the electrical panels for the carwash.
- A building permit or engineering certification was required for the shed enclosing the electrical panels for the car wash.

7. On November 14, 2001 the Board of Appeals convened the continuation of the Show Cause Hearing on Case No. S-1553. John Barr, Esquire, appeared on behalf of Tosco Marketing Company. Stanley N. Garber, Zoning Investigator, Department of Permitting Services and Tony Haddad, the station operator also appeared.

8. Mr. Barr reported that Wayne Noll of the MNCPPC technical staff had disapproved the proposed amended landscape plan and recommended compliance with the original site landscape plan. [Exhibit Nos. 77 and 62(a)].

9. Mr. Barr introduced into evidence [Exhibit No. 74] the permit for the electrical panels for the carwash.

10. Mr. Barr reported that it was not possible to obtain engineering certification for the existing shed around the carwash electrical panels and stated that the special exception holder would apply for a building permit to re-build the shed and remove the old one.

11. Tony Haddad, the station operator requested that the old shed be allowed to remain in place, to cover the electrical panels, and allow continued operation of the carwash, until such time as the permits could be obtained and a new structure built.

12. Mr. Haddad reported that the lights inside the carwash had been removed, and that the lights on the back of the station building had been turned off.

13. Sign E-2, which Mr. Garber previously found in violation of the Montgomery County Sign Ordinance, because of its size, had been partially altered [Exhibit Nos. 75 and 76 (a)-(d)] but requires additional parts to be fully compliant.

## **FINDINGS OF THE BOARD**

The Board finds that the duration of the ongoing violations in connection with the special exception is unacceptable. Therefore the Board requires:

1. Approval by MNCPPC technical staff of an amended landscape plan, and until such approval is obtained, planting in compliance with the original landscape and lighting plan for the special exception [Exhibit No. 62(a)].
2. Cessation of the carwash operation until such time as a building permit is issued and a new shed constructed to house the electrical panels for the carwash.
3. Installation of coverplates on the lights on the rear of the station building within 15 days of issuance of this Resolution.

4. Complete correction of Sign E-2 within 15 days of issuance of this Resolution.
5. The Board will reconvene the Show Cause Hearing on December 12, 2001 at 10:30 a.m. for the special exception holder to report on compliance with the landscape plan.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland that the opinion stated above is adopted as the Resolution required by law as its decision on the above-entitled case.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Allison I. Fultz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

Entered in the Opinion Book  
of the Board of Appeals for  
Montgomery County, Maryland  
this 4<sup>th</sup> day of December, 2001.

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Katherine Freeman  
Executive Secretary to the Board

**NOTE:**



Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date the Opinion is mailed and entered in the Opinion Book (See Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

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CASE No. S-1553

PETITION OF MOBIL OIL CORPORATION  
(c/o Tosco Marketing Company, LLC)

**NOTICE OF CONTINUATION OF SHOW CAUSE HEARING**  
**FOR REVOCATION OF SPECIAL EXCEPTION**

Please take notice that a Show Cause Hearing will be held on the **Wednesday, the 10<sup>th</sup> day of October, 2001, at 1:30 p.m.**, or as soon thereafter as this matter can be heard, in the Second Floor Davidson Memorial Hearing Room of the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland.

The Board of Appeals has received memorandums dated June 26, 2000 and January 23, 2001 from Stanley N. Garber, Zoning Investigator, Department of Permitting Services. Mr. Garber's memorandum, dated June 26, 2000 states, in part:

"On May 25, 1999, Acting Executive Secretary Katherine Freeman requested the Department conduct an inspection of the special exception and provide the Board with a report. On May 13, 1999, Zoning Investigator Susan Scala-Demby issued Mobil Oil Corporation, a Notice of Violation to remove the security lights or modify the special exception. On June 1, 1999, Mobil Oil Corporation's attorney John R. Barr responded to Ms. Scala-Demby's Notice in writing, that he will "request Mobil to obtain from the manufacturer of the new security lights, the necessary technical information for determining the halo to be cast by these lights, as well as what devices are available to focus or shade them". On July 7, 1999, Mr. Barr sent another letter to Ms. Scala-Demby that he would advise his client to file for a new lighting plan at MNCPPC. He further states, "Either Mobil will file such a request or they will appeal the Notice of Violation to the Board. On November 30, 1999, Mr. Barr sent Wayne Knoll, Development Review Section with MNCPPC, a letter requesting staff approval for the change of the approved lighting plan. On February 1, 2000, Mr. Knoll responded to Mr. Barr's letter requesting that several changes be made to reduce the amount of light leaving the site.

. . . I met with Mr. Barr and his client at the Mobile Station on May 12, 2000 and required that the new lighting be disconnected until the matter is resolved.

. . . Therefore, I request that the Board petition a Show Cause Hearing to determine a resolution to this active violation."

Mr. Garber's January 23, 2001 memorandum states, in part:

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"On December 28, 2000, I issued a Notice of Violation to Middlebrook Incorporation c/o Tosco Marketing to obtain a building permit for a storage shed located behind the car wash and to remove all signs on the property that are without issued permits or, the Board's approval. Copies of the Notice were sent to the property owner and the Mobil Station located in Germantown.

On January 5, 2001, I met with the manager of Mobil Oil who requested that I allow the signs to remain on the property. I indicated to him that the signs are not only without permits but are also located in the County R-O-W and my direction to remove the signs within 15 days would still be enforced. As of this date, the signs still remain on the property without issued permits and we have not received an application for the storage shed. The owner indicated to me that the shed couldn't be removed as directed in my Notice, since the electrical panel boxes located in the shed feed power to operate the car wash.

Therefore, I request that the Board petition a Show Cause Hearing to determine a resolution to this active violation per Section 59-G-1.3(a)(4) of the Montgomery County Zoning Ordinance."

Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance pertains to the revocation of a special exception and provides in part:

- (e) **"Show cause hearing for revocation of a special exception.** If, under this Article, the Board receives a written notice from the Department that the terms or conditions of a special exception grant or that the terms, conditions or restriction attached to the grant of any permit issued under this Article are not being complied with, the Board, by an affirmative vote of at least 3 members, may issue an order to the special exception holder and to the property owner to appear before the Board at a date, time and place specified to show cause why the special exception should not be revoked."

The Board finds that the special exception holder is in violation the terms of the special exception pursuant to Section 59-G-1.3(e) and a public hearing will be held by the Board of Appeals for the petitioner to show cause why the special exception to permit an automobile filling station should not be revoked. Failure of the property owner of the special exception or their representative to appear at the hearing may result in the issuance of an order revoking the exception.

Based on the June 26, 2000 memorandum from Mr. Garber, the Board at its worksession held July 25, 2000 issued a Notice for a Show Cause Hearing in Case No. S-1553, scheduled for April 17, 2001.

The Board at its worksession held on February 20, 2001, amended the Notice of Show Cause Hearing to include the issues in the Notice of Violation issued December 28, 2000, by the Department of Permitting Services.

The Board convened the Show Cause Hearing on April 17, 2001. At the conclusion of the proceeding, the Board decided to schedule another hearing date for the continuation of the Show Cause Hearing.

The subject property is a 1.0830 acre portion of parcel 307, located at the southeast quadrant of the intersection of Plummer Drive and Frederick Road, located at 19235 Frederick Road, Germantown, Maryland, in the C-1 Zone.

Notice of Show Cause Hearing for Revocation of Special Exception mailed this 25th day of June, 2001, to:

Tony Haddad  
Mobil Oil Corporation  
John R. Barr, Esquire  
Charles W. Thompson, Jr., Esquire, County Attorney  
Martin Klauber, Esquire, People's Counsel  
Michael Ma, Development Review Division, M-NCPPC  
Director, Department of Environmental Protection  
Director, Department of Housing and Community Affairs  
Director, Department of Permitting Services  
Director, Department of Transportation  
Chief, Division of Development Services and Regulation,  
Department of Environmental Protection  
State Highway Administration  
Fire Marshal  
Board of Education  
Washington Suburban Sanitary Commission  
Members, County Board of Appeals  
Property Owner: Middlebrook, Inc.  
Contiguous and confronting property owners  
Fox Chapel Civic Association  
Fox Chapel North Homes Association, Inc.  
Middlebrook Hills Community Association  
Middlebrook Manor Homes Association  
Seneca Park Homeowners Association

County Board of Appeals,

by: \_\_\_\_\_  
Katherine Freeman  
Executive Secretary to the Board

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CASE No. S-1553

PETITION OF MOBIL OIL CORPORATION

**AMENDED NOTICE OF SHOW CAUSE HEARING FOR  
REVOCATION OF SPECIAL EXCEPTION**

The Board of Appeals has received a memorandum dated January 23, 2001, from Stanley N. Garber, Zoning Investigator, Department of Permitting Services, requesting a Show Cause Hearing. The Board is also in receipt of a prior memorandum dated June 26, 2000, from Mr. Garber requesting a Show Cause Hearing for the special exception property. Based on the June 26, 2000 memorandum from Mr. Garber, the Board issued a Notice for a Show Cause Hearing in Case No. S-1553, for April 17, 2000. Mr. Garber's memorandum dated January 23, 2001 states:

"On December 28, 2000, I issued a Notice of Violation to Middlebrook Incorporation c/o Tosco Marketing to obtain a building permit for a storage shed located behind the car wash and to remove all signs on the property that are without issued permits or, the Board's approval. Copies of the Notice were sent to the property owner and the Mobil Station located in Germantown.

On January 5, 2001, I met with the manager of Mobil Oil who requested that I allow the signs to remain on the property. I indicated to him that the signs are not only without permits but are also located in the County R-O-W and my direction to remove the signs within 15 days would still be enforced. As of this date, the signs still remain on the property without issued permits and we have not received an application for the storage shed. The owner indicated to me that the shed couldn't be removed as directed in my Notice, since the electrical panel boxes located in the shed feed power to operate the car wash.

Therefore, I request that the Board petition a Show Cause Hearing to determine a resolution to this active violation per Section 59-G-1.3(a)(4) of the Montgomery County Zoning Ordinance."

The Board at its worksession held on February 20, 2001, amended the Notice of Show Cause Hearing to include the issues in the Notice of Violation issued December 28, 2000, by the Department of Permitting Services.

The hearing will be held on the 17th day of April, 2001, at 10:00 a.m., or as soon thereafter as this matter can be heard, in the Second Floor Davidson Memorial Hearing Room of the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland.

The subject property is a 1.0830 acre portion of parcel 307, located at the southeast quadrant of the intersection of Plummer Drive and Frederick Road, located at 19235 Frederick Road, Germantown, Maryland, in the C-1 Zone.

Amended Notice of Show Cause Hearing for Revocation of Special Exception mailed this 22nd day of February, 2001, to:

Tony Haddad  
Mobil Oil Corporation  
John R. Barr, Esquire  
Charles W. Thompson, Jr., Esquire, County Attorney  
Martin Klauber, Esquire, People's Counsel  
Zoning Supervisor, Development Review Division, M-NCPPC  
Director, Department of Environmental Protection  
Director, Department of Housing and Community Affairs  
Director, Department of Permitting Services  
Director, Department of Transportation  
Chief, Division of Development Services and Regulation,  
Department of Environmental Protection  
State Highway Administration  
Fire Marshal  
Board of Education  
Washington Suburban Sanitary Commission  
Members, County Board of Appeals  
Contiguous and confronting property owners  
Fox Chapel Civic Association  
Fox Chapel North Homes Association, Inc.  
Middlebrook Hills Community Association  
Middlebrook Manor Homes Association  
Seneca Park Homeowners Association

County Board of Appeals

by: \_\_\_\_\_  
Katherine Freeman  
Executive Secretary to the Board

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CASE No. S-1553

PETITION OF MOBIL OIL CORPORATION

NOTICE OF SHOW CAUSE HEARING FOR REVOCATION OF SPECIAL EXCEPTION

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"On May 25, 1999, Acting Executive Secretary Katherine Freeman requested the Department conduct an inspection of the special exception and provide the Board with a report. On May 13, 1999, Zoning Investigator Susan Scala-Demby issued Mobil Oil Corporation, a Notice of Violation to remove the security lights or modify the special exception. On June 1, 1999, Mobil Oil Corporation's attorney John R. Barr responded to Ms. Scala-Demby's Notice in writing, that he will "request Mobil to obtain from the manufacturer of the new security lights, the necessary technical information for determining the halo to be cast by these lights, as well as what devices are available to focus or shade them". On July 7, 1999, Mr. Barr sent another letter to Ms. Scala-Demby that he would advise his client to file for a new lighting plan at MNCPPC. He further states, "Either Mobil will file such a request or they will appeal the Notice of Violation to the Board. On November 30, 1999, Mr. Barr sent Wayne Knoll, Development Review Section with MNCPPC, a letter requesting staff approval for the change of the approved lighting plan. On February 1, 2000, Mr. Knoll responded to Mr. Barr's letter requesting that several changes be made to reduce the amount of light leaving the site.

. . . I met with Mr. Barr and his client at the Mobile Station on May 12, 2000 and required that the new lightning be disconnected until the matter is resolved.

. . . Therefore, I request that the Board petition a Show Cause Hearing to determine a resolution to this active violation."

Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance pertains to the revocation of a special exception and provides in part:

- (f) **"Show cause hearing for revocation of a special exception.** If, under this Article, the Board receives a written notice from the Department that the terms or conditions of a special exception grant or that the terms, conditions or restriction attached to the grant of any permit issued under this Article are not being complied with, the Board, by an affirmative vote of at least 3 members, may issue an order to the special exception holder and to the property owner to



appear before the Board at a date, time and place specified to show cause why the special exception should not be revoked.”

The Board finds that the special exception holder is in violation the terms of the special exception pursuant to Section 59-G-1.3(e) and a public hearing will be held by the Board of Appeals for the petitioner to show cause why the special exception to permit an automobile filling station should not be revoked. Failure of the property owner of the special exception or their representative to appear at the hearing may result in the issuance of an order revoking the exception.

The Board of Appeals considered Mr. Garber’s June 26, 2000 request at its worksession held on July 25, 2000. A notice for Show Cause Hearing as prepared and a Show Cause Hearing was scheduled for November 29, 2000 at 1:30 p.m. The Show Cause Hearing was held on November 29, 2000 and the special exception was revoked. The special exception holder did not attend the hearing. The Board was later notified that neither the special exception holder, Tony Haddad, nor his attorney, John R. Barr, received notice of the Show Cause Hearing.

At the Board’s worksession held on January 9, 2001, the Board rescinded its revocation of the special exception and rescheduled the Show Cause Hearing.

The hearing will be held on the 17th day of April, 2001, at 10:00 a.m., or as soon thereafter as this matter can be heard, in the Second Floor Davidson Memorial Hearing Room of the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland.

The subject property is a 1.0830 acre portion of parcel 307, located at the southeast quadrant of the intersection of Plummer Drive and Frederick Road, located at 19235 Frederick Road, Germantown, Maryland, in the C-1 Zone.

Notice of Show Cause Hearing for Revocation of Special Exception mailed this 12th day of January, 2001, to:

Tony Haddad  
Mobil Oil Corporation  
John R. Barr, Esquire  
Charles W. Thompson, Jr., Esquire, County Attorney  
Martin Klauber, Esquire, People’s Counsel  
Zoning Supervisor, Development Review Division, M-NCPPC  
Director, Department of Environmental Protection  
Director, Department of Housing and Community Affairs  
Director, Department of Permitting Services  
Director, Department of Transportation  
Chief, Division of Development Services and Regulation,  
Department of Environmental Protection  
State Highway Administration  
Fire Marshal  
Board of Education  
Washington Suburban Sanitary Commission

Members, County Board of Appeals  
Contiguous and confronting property owners  
Fox Chapel Civic Association  
Fox Chapel North Homes Association, Inc.  
Middlebrook Hills Community Association  
Middlebrook Manor Homes Association  
Seneca Park Homeowners Association

County Board of Appeals

by: \_\_\_\_\_  
Katherine Freeman  
Executive Secretary to the Board

Case No. S-1553

PETITION OF MOBIL OIL CORPORATION

EXHIBIT LIST

1. Application
2. List of adjacent and confronting property owners
3. Statement of summary
4. (a) Survey  
(b) Property Description
5. (a) Site Plan  
(b) Landscape Plan  
(c) Signage and lighting plan
6. (a) Brochure – Lighting  
(b) Brochure – night time lighting  
(c) Brochure – car wash
7. (a) Copy of Lease Agreement  
(b) Copy of Deed
8. Planning, zoning and engineering report (21 pages)
9. Traffic Impact Analysis prepared by Lukas Associates, date March 21, 1988
10. Mont. Co. map showing existing Mobils and proposed site
11. Zoning Vicinity Map
12. Land use map
13. Letter from petitioner's attorney, JoAnna J. Barnes, requesting change of hearing date
14. (a) Envelope showing date notice mailed  
(b) Notice of change of date of hearing – scheduled to July 28, 1988
15. (a) Envelope showing date notice mailed  
(b) Corrected change of date notice of hearing scheduled for August 25, 1988
16. Letter, June 16 from Ms Barnes with attachments  
(a) revised Traffic Impact Analysis
17. Letter from Ms. Barnes with attached site plan revised 6/22/88  
(a) revised site plan
18. Letter dated July 13, 1988 with attached copies of grading plan  
(a) Grading Plan

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19. Letter, August 3, 1988, with revised plans
  - (a) Site development plan (showing grading)
  - (b) conceptual landscape plan
  - (c) Lighting and sign plan
  - (d) Site plan
20.
  - (a) Envelope showing date notice mailed
  - (b) Notice of receipt of additional exhibits
21.
  - (a) M-NCPPC Technical staff report and recommendation
  - (b) MC Planning Board recommendation
22. Letter from the Fox Chapel Civic Assoc. with concerns 8/18/88
23.
  - (a) Envelope showing date notice mailed
  - (c) Notice of hearing originally scheduled for July 14, 1988
24. Affidavit
25. Aerial Photo (missing from file)
26. Photo of existing improvements (missing from file)
27. Elevation of Proposed Facility (missing from file)
28. Zoning Vicinity Map (missing from file)
29. Master Plan – Plan showing gas station (missing from file)
30. Site plan – rendering in color
31. Resume - Glascock
32. Resume Mr. Likas
33. Opinion of the Board dated 8-25-88
34. Letter requesting extension of eight more months to implement plus a list of confronting and adjoining – dated 8/17/88
35. Resolution to extendt time to implement – dated 9/6/89
36. Letter of complaint to the Board from Jules G. Korner – dated 5/7/66

37. Letter requesting approval of revised lighting plan – dated 11/30/99

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38. Letter to Ms. Turnbull – dated 5/12/99

39. Notice of Violation – dated 6/1/99

40. Letter to Mr. Barr from Wayne Noll, DPS – request for changes in lighting dated 2/1/00

41. Letter to Mr. Barr from Wayne Noll, DPS – revised lighting plan – dated 4/4/00

42. Letter from Mr. John Barr regarding his client Mobil – dated 5/12/00

43. Memo from Stan Garber to Donald Spence – dated 6/26/00

44. Letter to chairman from Tony Haddad requesting modification to his car wash – dated 7/19/00

45. Worksession Minutes, July 25, 2000

46. Resolution to Deny Request for Administrative Modification

47. (a) Envelope showing date notice mailed  
(b) Notice of hearing scheduled for November 29, 2000

48. Original specifications re: lighting

49. (a) – (d) Photographs of current condition re: lighting

50. (a) – (c) Photographs of car wash

51. (a) Letter to BOA from John Barr, dated 1-3-01, re: Approved Revised Lighting Plan  
(b) Copy of letter to John Barr from M-NCPPC, dated 1-2-01, re: approved lighting plan  
(c) Approved lighting plan

52. Worksession Minutes, Tuesday, January 9, 2001

53. Worksession Minutes, Tuesday, July 25, 2000

54. Worksession Minutes, Tuesday, September 5, 2000

55. (a) Memorandum to BOA from Stan Garber, dated 12-5-00, re: investigation of site  
(b) – (h) Photographs of site  
(i) – Site plan

- 56. (a) Envelope showing date notice mailed
- (b) Notice of Show Cause Hearing scheduled for April 17, 2001

- 57. (a) Memorandum to BOA from Stan Garber, dated 1-23-01, re: request to schedule a Show Cause Hearing
  - (b) Notice of Violation
  - (c) – (f) Photographs
- 58. Worksession Minutes, Tuesday, February 20, 2001
- 59. (a) Envelope showing date notice mailed
  - (b) Amended Notice of Show Cause Hearing scheduled for April 17, 2001
- 60. (a) Memorandum to BOA from M-NCPPC, dated 3-14-01, re: Revised Approved Plans
  - (b) Revised plans
- 61. Certified mail receipts for February notice mailing
- 62. (a) Memorandum to BOA from M-NCPPC Development Review Division, dated 3-26-90, re: Approved Plans for Special Exception
  - (b) Approved Plans (2 pages)

**End of File 1 of 2**

**File 2 of 2**

- 63. Letter to BOA from John Barr, dated 6-6-01, re: Approved lighting plans
- 64. (a) Letter to BOA from John Barr, dated 6-6-01, re: Request for Transfer and Modification
  - (b) Site development, signage, landscape and lighting plans (8 pages)
- 65. Letter to BOA from John Barr, dated 6-8-01, re: list of adjoining and confronting property owners
- 66. (a) Letter to BOA from John Barr, dated 6-21-01, re: lighting issues
  - (b) Copy of letter from David Groh, L&C Electric, Inc., dated 6-15-01, re: site visit

- 67. (a) Envelope showing date notice mailed  
(b) Notice of Continuation of Show Cause Hearing for Revocation of Special Exception for hearing scheduled for October 10, 2001
- 68. Certified Mail receipts for June notice mailed
- 69. Returned notices

- 70. (a) Cover transmittal letter from Macris, Hendricks and Glascock, dated 6-22-01, re: revised plans  
(b) One copy of previously submitted plans to be revised (7 pages)  
(c) Revised landscape, lighting and signage plan  
(d) Revised elevations and construction notes for landscape, lighting and signage plan  
(e) Revised elevations of facility depicting proposed car wash  
(f) Revised site plan depicting proposed car wash  
(g) Revised landscape plan  
(h) Revised site development plan depicting proposed car wash  
(i) Revised curbing and paving construction notes
- 71. Copy of letter to M-NCPPC from John Barr, dated 10-15-01, re: modification
- 72. (a) – (g) Photographs taken summer 2001 of existing landscaping
- 73. (a) – (g) Photographs of sign on site
- 74. Electrical Permit No. 232006
- 75. Photograph of new sign submitted by Mr. Barr
- 76. (a) – (d) Photographs of new signs taken by Mr. Garber
- 77. Letter to Mr. Barr from Mr. Noll, dated 11-7-01
- 78. Letter to Mr. Noll from Mr. Barr, dated 10-15-01
- 79. Resolution to Require Compliance, effective December 4, 2001
- 80. Corrected Resolution to Require Compliance, effective December 4, 2001
- 81. \_\_\_\_\_
- 82. \_\_\_\_\_

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BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland Avenue  
(240) 777-6600

CASE NO. S-1553

PETITION OF MOBIL OIL CORPORATION

NOTICE OF SHOW CAUSE HEARING FOR REVOCATION OF SPECIAL EXCEPTION

The Board of Appeals has received a memorandum dated June 26, 2000, from Stanley N. Garber, Zoning Investigator, Department of Permitting Services. Mr. Garber's memorandum states, in part:

"On May 25, 1999, Acting Executive Secretary Katherine Freeman requested the Department conduct an inspection of the special exception and provide the Board with a report. On May 13, 1999, Zoning Investigator Susan Scala-Demby issued Mobil Oil Corporation, a Notice of Violation to remove the security lights or modify the special exception. On June 1, 1999, Mobil Oil Corporation's attorney John R. Barr responded to Ms. Scala-Demby's Notice in writing, that he will "request Mobil to obtain from the manufacturer of the new security lights, the necessary technical information for determining the halo to be cast by these lights, as well as what devices are available to focus or shade them". On July 7, 1999, Mr. Barr sent another letter to Ms. Scala-Demby that he would advise his client to file for a new lighting plan at MNCPPC. He further states, "Either Mobil will file such a request or they will appeal the Notice of Violation to the Board. On November 30, 1999, Mr. Bar sent Wayne Knoll, Development Review Section with MNCPPC, a letter requesting staff approval for the change of the approved lighting plan. On February 1, 2000, Mr. Knoll responded to Mr. Barr's letter requesting that several changes be made to reduce the amount of light leaving the site.

. . . I met with Mr. Barr and his client at the Mobile Station on May 12, 2000 and required that the new lightning be disconnected until the matter is resolved.

. . . Therefore, I request that the Board petition a Show Cause Hearing to determine a resolution to this active violation."

The Board of Appeals considered Mr. Garber's request at its worksession on July 25, 2000. Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance pertains to the revocation of a special exception and provides in part:

**"Show cause hearing for revocation of a special exception.** If, under this Article, the Board receives a written notice from the Department that the terms or conditions of a special exception grant or that the terms, conditions or restriction attached to the grant of any permit issued under this Article are not being complied with, the Board, by an affirmative vote of at least 3 members, may issue an order to the special exception holder and to the property owner to

appear before the Board at a date, time and place specified to show cause why the special exception should not be revoked.”

The Board finds that the special exception holder is in violation the terms of the special exception pursuant to Section 59-G-1.3(e) and a public hearing will be held by the Board of Appeals for the petitioner to show cause why the special exception to permit an automobile filling station should not be revoked. Failure of the property owner of the special exception or their representative to appear at the hearing may result in the issuance of an order revoking the exception.

The hearing will be held on the 29th day of November, 2000, at 1:30 p.m., or as soon thereafter as this matter can be heard, in the Second Floor Davidson Memorial Hearing Room of the Stella B. Werner Council Office Building, 100 Maryland Avenue, Rockville, Maryland.

The subject property is a 1.0830 acre portion of parcel 307, located at the southeast quadrant of the intersection of Plummer Drive and Frederick Road, located at 19235 Frederick Road, Germantown, Maryland, in the C-1 Zone.

Notice of Show Cause Hearing for Re vocation of Special Exception mailed this 13th day of October, 2000, to:

Mobil Oil Corporation  
John R. Barr, Esquire  
Charles W. Thompson, Jr., Esquire, County Attorney  
Martin Klauber, Esquire, People's Counsel  
Zoning Supervisor, Development Review Division, M-NCPPC  
Director, Department of Environmental Protection  
Director, Department of Housing and Community Affairs  
Director, Department of Permitting Services  
Director, Department of Transportation  
Chief, Division of Development Services and Regulation,  
Department of Environmental Protection  
State Highway Administration  
Fire Marshal  
Board of Education  
Washington Suburban Sanitary Commission  
Members, County Board of Appeals  
Contiguous and confronting property owners  
Fox Chapel Civic Association  
Fox Chapel North Homes Association, Inc.  
Middlebrook Hills Community Association  
Middlebrook Manor Homes Association  
Seneca Park Homeowners Association

County Board of Appeals

by: \_\_\_\_\_  
Katherine Freeman  
Executive Secretary to the Board

BOARD OF APPEALS  
for  
MONTGOMERY COUNTY

Stella B. Werner Council Office Building  
100 Maryland Avenue  
Rockville, Maryland 20850  
(240) 777-6600

Case No. S-1553

PETITION OF MOBIL OIL CORPORATION

RESOLUTION TO DENY REQUEST FOR ADMINISTRATIVE MODIFICATION  
AND  
SCHEDULE A SHOW CAUSE HEARING

(Resolution adopted July 25, 2000)  
(Effective date of Resolution, October 12, 2000)

The Board received correspondence dated July 19, 2000, from Tony Haddad, Mobil Dealer. Mr. Haddad's letter states, in part:

"I'm writing to seek your approval and the Board's to expand my Car Wash building at 19235 Frederick Rd. in Germantown. That building was put in more than ten years ago.

. . . the equipment that I had is old and it started damaging customer's cars. I was faced with shutting down my wash or get new equipment. In order to stay open and keep happy customers I made a decision of taking out the equipment that was cleaning the cars so it won't damage it and now we are washing cars by hand.

. . . I'm hopeful that you and the board will grant my request . . ."

The Board is also received correspondence dated June 26, 2000, from Stanley N. Garber, Zoning Investigator, Department of Permitting Services. Mr. Garber's memorandum states, in part:

"On May 25, 1999, Acting Executive Secretary Katherine Freeman requested the Department conduct an inspection of the special exception and provide the Board with a report. On May 13, 1999, Zoning Investigator Susan Scala-Demby issued Mobil Oil Corporation, a Notice of Violation to remove the security lights or modify the special exception. On June 1, 1999, Mobil Oil Corporation's attorney John R. Barr responded to Ms. Scala-Demby's Notice in writing, that he will "request Mobil to obtain from the manufacturer of the new security lights, the necessary technical information for determining the halo to be cast by these lights, as well as what devices are available to focus or shade them". On July 7, 1999, Mr. Barr sent another letter to Ms. Scala-Demby that he would advise his client to file for a new lighting plan at MNCPPC. He further states, "Either Mobil will file such a request or they will appeal the Notice of Violation to the Board. On November 30, 1999, Mr. Barr sent Wayne Knoll, Development Review Section with MNCPPC, a letter requesting staff approval for the change of the approved lighting plan. On February 1, 2000, Mr. Knoll responded to Mr. Barr's letter requesting that several changes be made to reduce the amount of light leaving the site.

. . . I met with Mr. Barr and his client at the Mobile Station on May 12, 2000 and required that the new lightning be disconnected until the matter is resolved.

. . . Therefore, I request that the Board petition a Show Cause Hearing to determine a resolution to this active violation."

The Board considered the request to expand the car wash at its July 25, 2000 worksession. Based on the foregoing information, the Board, after careful consideration of the correspondence and a review of the record in the above-referenced case finds that the demolition, reconstruction and expansion the car wash would significantly impact the special exception site and the neighboring properties, and finds that the proposed changes to the site plan would change in the nature, character or intensity of the use as stated in Section 59-G-1.3(c)(2) of the Montgomery County Zoning Ordinance:

If the proposed modification would alter the terms and/or conditions of the special exception in such manner as to substantially change the nature, character or intensity of use of the original grant, would result in the extension, expansion or alternation of the size, location or appearance of the structure, or would intensify the impact on traffic or on the immediate neighborhood, the Board shall convene a public haring to consider the proposed modification. The Board shall notify the special exception holder . . .

Additionally, the Board finds that the special exception is in violation of the approved lighting plan and Mr. Garber's June 26, 2000 memorandum requests a Show Cause Hearing. Section 59-G-1.3(e) of the Montgomery County Zoning Ordinance states:

**Show cause hearing for revocation of a special exception.** If, under this Article, the Board receives a written notice from the Department that the terms or conditions of a special exception grant or that the terms, conditions or restriction attached to the grant of any permit issued under this Article are not being complied with, the Board, by an affirmative vote of at least 3 members, may order the special exception holder and the property owner to appear before the Board at a date, time, and place specified to show cause why the special exception should not be revoked.

Accordingly, the Board denies the request for an administrative modification to expand the car wash in Case No. S-1553; the Board shall schedule a Show Cause Hearing to resolve the Notice of Violation.

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the record of Case No. S-1553 shall be reopened to receive Mr. Haddad's July 19, 2000 letter with attachments and Mr. Garber's June 26, 1999 memorandum with attachments; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the request to modify the car wash by administrative modification, is denied; and

BE IT FURTHER RESOLVED by the Board of Appeals for Montgomery County, Maryland, that all terms and conditions of the original special exception, an automobile filling station, and any modifications thereto, shall remain in full force and effect.

The subject property is a 1.0830 acre portion of parcel 307, located at the southeast quadrant of the intersection of Plummer Drive and Frederick Road, located at 19235 Frederick Road, Germantown, Maryland, in the C-1 Zone.

On a motion by Louise L. Mayer, seconded by Mindy Pittell Hurwitz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

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Donald H. Spence, Jr.  
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing  
Opinion was officially entered in the  
Opinion Book of the County Board of  
Appeals this 12th day of October, 2000.

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Katherine Freeman  
Executive Secretary to the Board

NOTE:

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.

May 25, 1999

M E M O R A N D U M

TO: Reggie Jetter, Chief  
Division of Casework Management  
Department of Permitting Services

FROM: Katherine Freeman, Acting Executive Secretary  
Board of Appeals

SUBJECT: Request for Inspection

Re: Case No. S-1553  
Petition of Mobile Oil Corporation

The Board of Appeals has received correspondence from Mr. Jules Korner, an adjacent neighbor to the above-captioned special exception. For your reference, I enclose Mr. Korner's letter and the Board's 1998 Opinion granting the special exception. Mr. Korner is concerned in particular about changes to the lighting at the subject property.

The Board requests that the Department inspect the special exception and provide the Board with a report of the results of the inspection.

Thank you.

cc: Mr. Jules Korner